

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

) **COMPLAINT NO. 98-076**  
the matter of: ) **ADMINISTRATIVE CIVIL LIABILITY**  
) **FOR VIOLATIONS OF THE CALIFORNIA WATER CODE**  
) **SECTION 13376, 13377, and 13385**  
) **AND BOARD ORDER NO. 94-021**  
**CITY OF LOS ANGELES** ) **(NPDES PERMIT NO. CA0109991)**  
) **WASTE DISCHARGE REQUIREMENTS FOR**  
) **THE CITY OF LOS ANGELES**

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. Order No. 94-021 (NPDES Permit No. CA0109991), adopted by this Regional Board on February 24, 1994, specifies Waste Discharge Requirements for the Hyperion Treatment Plant, including the Hyperion Service Area Sewage Collection System (Collection System). The Hyperion Treatment Plant, including the Collection System, is owned and operated by the City of Los Angeles (hereinafter City).
2. The City is alleged to have violated requirements specified in Order No. 94-021, for which the Regional Board may impose civil liability, i.e. penalties, under the California Water Code (CWC), Section 13385. Pursuant to California Code of Civil Procedure, Section 338, this Regional Board is authorized to issue an Administrative Civil Liability for events dating back to three years from the date of this action, i.e. October 1, 1995.
3. For the three-year period beginning October 1, 1995 and ending September 30, 1998, the City is alleged to have caused about 800 sanitary sewer overflows, discharging a reported amount aggregating approximately 47.5 million gallons of raw sewage (44 million of which were associated with wet weather sanitary sewer overflows between February 3, 1998 and May 23, 1998). Most of the raw sewage entered storm drains and flowed into Ballona Creek and the Santa Monica Bay or into the Los Angeles River and San Pedro Bay, thereby polluting waters of the state. Impacts from these sanitary sewer overflows include: (i) a risk to public health, (ii) public nuisance resulting from exposure of raw sewage along streets, and (iii) economic losses resulting from numerous beach closures. Other impacts that may have affected beneficial uses, such as aquatic life, are unknown.
4. Unless waived, a hearing on this matter will be held before the Regional Board on November 2, 1998 in the Camarillo City Council Chamber, 601 Carmen Drive, Camarillo, California. You and/or your representative(s) will have an opportunity to be heard, and to contest the allegations in this complaint and/or the imposition of penalties by the Regional Board. An agenda for the hearing will be mailed to you, not less than ten days before the hearing date. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

**FACTS SUPPORTING COMPLAINT**

September 30, 1998

5. The facts set forth below are the bases for the allegations. These facts are based upon: telephone spill reports, written spill reports/lists, summaries of Capital Improvement Programs, and other reports prepared by the City; climate data from the County of Los Angeles; Hazardous Materials Spill Reports from the Governor's Office of Emergency Services; Regional Board inspection reports; and meetings with representatives from the City of Los Angeles between February and September 1998.

- a) During the dry weather period from June 1998 through September 1998, the flow of sewage was extremely high in certain portions of the City's Collection System. In particular, in the South Central portion of the Collection System, which is referred to as the "Maze," dry weather flows were 90% of capacity.
- b) In designing, operating, and maintaining sewers, a sewerage agency needs to ensure that sufficient excess capacity (above existing levels of dry weather flows) exists to accommodate not only increased flows from growth in its service area, but increased flows that will occur through inflow and infiltration as well.
- c) Between February 3, 1998 and May 23, 1998, the City caused sanitary sewer overflows aggregating over 44 million gallons, as summarized below and as plotted on the attached figure.

• Glassell Park /Highland Park (Eagle Rock Blvd/York Blvd)	29.4 million gallons
• South Central (along 41st Street)	6.1 million gallons
• El Sereno (along North Figueroa Street)	6.8 million gallons
• Silverlake (along Griffith Park Blvd)	1.2 million gallons
• North Hollywood (Cahuenga Blvd & Lankershim Blvd)	0.6 million gallons
• Boyle Heights (along Blades Street)	0.6 million gallons
• Palms (Regent Street & Military Avenue)	0.009 million gallons
• Pacific Palisades/Malibu (along Pacific Coast Highway)	0.001 million gallons

Most of these sanitary sewer overflows, which occurred during wet weather, were located at "choke points" in the City's Collection System, which occurred in areas where the sewers had insufficient hydraulic capacity to carry the inflow of storm water and the infiltration of ground water into the sewers. The lack of hydraulic capacity at the choke points was due to, among other factors:

- increasing dry weather flows of sewage in certain areas, due to growth;
  - severe cracked pipes in certain areas; and
  - sliplining in certain portions of the Collection System, such as the Maze.
- d) Prior to February 1998, the City caused sanitary sewer overflows during wet periods in several of the same areas cited above, including Glassell Park, Highland Park, El Sereno, and Pacific Palisade/Malibu areas. In particular, in the South Central area, the City discharged raw sewage, aggregating over 275,000 gallons, onto streets and into waters of the State between January and February 1993. Between January and March 1995, the City again discharged raw sewage, aggregating 557,000 gallons, onto streets and into waters of the State. From October 1995 through December 1997 the City discharged raw sewage aggregate 1,226,580 gallons, unto streets and waters of the state.

- e) Since 1990, the City has periodically evaluated the need for capital investments in its Collection System, and has proposed several major projects that would have, if implemented and completed, increased hydraulic capacity.
- In 1990, the City identified a sewer capacity problem in the Maze, and initiated an examination of needed improvements (Draft Environmental Impact Report for the NOS-ECIS, 1998).
  - In 1992, the City proposed to replace the Maze with an East Central Interceptor Sewer (ECIS), as documented in a report entitled "Concept Report-North Outfall Relief Sewer II." In addition to ECIS, the City also proposed to undertake other major sewer projects, including projects in the areas of Eagle Rock, North Hollywood, and the LA/Glendale to Mission area (Capital Improvement Program, 1992). However, construction on these sewer projects was deferred.
  - From 1993 to 1998, as documented in annual Capital Improvement Programs, the City repeatedly deferred several major sewer projects.
- f) On September 14, 1998, the Regional Board adopted Cease and Desist Order No. 98-073, directing the City to complete major sewer projects within a timeline ending in December 2005. These major sewer projects include a North Hollywood Interceptor Sewer, the East Central Interceptor Sewer, a North Outfall (Relief) Sewer-LAG to Mission Road, and an Eagle Rock Area Relief Sewer.

#### **PERMIT PROVISIONS**

6. Sanitary sewer overflows are a violation of the following sections of Regional Board Order No. 94-021:
- a) "Section IV, Provision 2: Any discharge of wastes at any point other than specifically described in this order and permit is prohibited, and constitutes a violation thereof."
  - b) "Standard Provisions, Section B.7 (Prohibitions): Any overflow or bypass of facilities, including the waste collection system, is prohibited."
  - c) "Standard Provisions, Section C.1: Neither the treatment nor the discharge of pollutants shall create a pollution, contamination, or nuisance as defined by Section 13050 of the California Water Code."
  - d) "Standard Provisions, Section C.2: The discharger shall, at all times, properly operate and maintain all facilities and system of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with this order and permit..."
  - e) "Standard Provisions, Section C.10: The discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this order and permit which has a

reasonable likelihood of adversely affecting human health or the environment, including such accelerated or additional monitoring as necessary to determine the nature and impact of the violation.”

- f) Sections 13376 and 13377 of the CWC prohibit the discharge of pollutants to surface waters, except as authorized by waste discharge requirements that implement the provisions of the Federal Clean Water Act.

### CONCLUSION

7. The City could have avoided a significant portion of the sanitary sewer overflows if the Collection System had been maintained in a manner to provide sufficient hydraulic capacity. The City has proposed several Capital Improvement Programs since 1992, but has a poor record of timely implementation.

Impacts from these overflows include: (i) a risk to public health, (ii) public nuisance resulting from exposure of raw sewage along streets, and (iii) economic losses resulting from numerous beach closures. Other impacts, that may have affected beneficial uses such as aquatic life, are suspected, but cannot be specified.

### PROPOSED CIVIL LIABILITY

8. For the period starting October 1, 1995 through September 30, 1998, the total maximum civil liability authorized by the California Water Code (CWC) is \$478,013,700. This includes \$4,860,000 under Section 13385(c)(1) and \$473,153,700 under Section 13385(c)(2).

- a) Under Section 13385(c)(1) of the CWC, the maximum civil liability that could be imposed by the Regional Board for violation of the terms and conditions of Order No. 94-021 is \$10,000 per day per violation. For the period February through May 1998, the City is alleged to have violated Board Order No. 94-021 for 486 days. Therefore, the maximum liability under Section 13385(c)(1):

$$486 \text{ days} \times \$10,000 \text{ per day} = \underline{\underline{\$4,860,000}}$$

- b) Under Section 13385(c)(2) of the CWC, the maximum civil liability that could be imposed by the Regional Board for violation of the terms and conditions of Order No. 94-021 is ten dollars per gallon of discharge for volumes greater than 1,000 gallons. Therefore, the maximum liability under (c)(2) of the California Water Code is:

10/8/95	20,000 gallons - 1,000 gallons	X \$10	=	\$190,000
11/8/95	7,000 gallons - 1,000 gallons	X \$10	=	\$60,000
1/8/96	4,000 gallons - 1,000 gallons	X \$10	=	\$30,000
3/4/96	1,500 gallons - 1,000 gallons	X \$10	=	\$5,000
3/15/96	400,000 gallons - 1,000 gallons	X \$10	=	\$3,990,000
4/7/96	600,000 gallons - 1,000 gallons	X \$10	=	\$5,990,000
4/12/96	1,500 gallons - 1,000 gallons	X \$10	=	\$5,000
4/13/96	1,500 gallons - 1,000 gallons	X \$10	=	\$5,000

9/16/96	100,000 gallons - 1,000 gallons X \$10	=	\$990,000
1/17/97	25,000 gallons - 1,000 gallons X \$10	=	\$240,000
1/26/97	1,500 gallons - 1,000 gallons X \$10	=	\$5,000
2/6/97	2,000 gallons - 1,000 gallons X \$10	=	\$10,000
2/8/97	1,100 gallons - 1,000 gallons X \$10	=	\$1,000
2/17/97	10,000 gallons - 1,000 gallons X \$10	=	\$90,000
7/7/97	30,000 gallons - 1,000 gallons X \$10	=	\$290,000
9/4/97	5,400 gallons - 1,000 gallons X \$10	=	\$44,000
10/17/97	1,800 gallons - 1,000 gallons X \$10	=	\$8,000
11/11/97	9,000 gallons - 1,000 gallons X \$10	=	\$80,000
12/22/97	5,280 gallons - 1,000 gallons X \$10	=	\$42,800
2/3/98	38,400 gallons - 1,000 gallons X \$10	=	\$374,000
2/6/98	882,900 gallons - 1,000 gallons X \$10	=	\$8,819,000
2/7/98	1,156,000 gallons - 1,000 gallons X \$10	=	\$11,550,000
2/14/98	787,875 gallons - 1,000 gallons X \$10	=	\$7,868,750
2/23/98	38,896,825 gallons - 1,000 gallons X \$10	=	\$388,958,250
2/24/98	406,000 gallons - 1,000 gallons X \$10	=	\$4,050,000
2/26/98	1,625,000 gallons - 1,000 gallons X \$10	=	\$16,240,000
3/25/98	1,871,190 gallons - 1,000 gallons X \$10	=	\$18,701,900
4/1/98	115,500 gallons - 1,000 gallons X \$10	=	\$1,145,000
5/13/98	329,000 gallons - 1,000 gallons X \$10	=	\$3,280,000
5/14/98	2,040 gallons - 1,000 gallons X \$10	=	\$10,400
5/23/98	4,050 gallons - 1,000 gallons X \$10	=	\$30,500
9/28/98	6,000 gallons - 1,000 gallons X \$10	=	\$50,000

**TOTAL = \$473,153,700**

9. Pursuant to California Water Code Section 13385(e), the Regional Board is required to consider the following factors in determining the amount of civil liability to be imposed: the nature, circumstances, extent, and gravity of the violations; with respect to the violator, the ability to pay; any prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters as justice may require.
  - a) Nature, circumstances, extent, and gravity of the violations: The City discharged a total of 44.2 million gallons of raw sewage between February 3, 1998 and May 23, 1998, in violation of Order No. 94-021. As a result, the overflow of raw sewage created a condition of pollution and nuisance; furthermore, certain beaches along the Santa Monica Bay to the Long Beach area were closed for varying periods of time, from as brief as 5 days to as long as 23 days. During this period, elevated levels of fecal coliform were observed at coastal sampling points stretching from Malibu Pier to as far south as Torrance. However, as these overflows typically occurred during period of wet weather, and as there were pollutants from nonpoint sources that also contributed to the degradation of the waters of the State, a reduction from the maximum civil liability is warranted.
  - b) The ability of the discharger to pay: Payment of the maximum administrative civil liability of \$473 million would impose a significant financial hardship on the City. Therefore, a reduction from the maximum civil liability is warranted.

- c) Prior history of violations: The City has a history of violations, as evidenced by many informal and formal enforcement actions by this Regional Board, among which include:
- Complaint No. 85-006 for Administrative Civil Liability
  - Complaint No. 86-007 for Administrative Civil Liability
  - Cease and Desist Order No. 86-002
  - Cease and Desist Order No. 87-094
  - Complaint No. 87-096 for Administrative Civil Liability
  - Complaint No. 98-002 for Administrative Civil Liability
  - Cease and Desist Order No. 98-073

Therefore, no reduction from the maximum civil liability is warranted.

- d) Degree of culpability: As set forth in the City's annual Capital Improvements Programs (1992 through 1998), the City deferred construction of important sewer lines. Therefore, no reduction from the maximum civil liability is recommended.
- e) Economic benefit or savings: In deferring important sewer projects, the City realized an economic benefit. Therefore, no reduction from the maximum civil liability is warranted.
- f) Other matters as justice may require: Regional Board staff spent over 232 hours evaluating incidents of violation and preparing this Order and related documents. For staff recovery purposes, the Regional Board charges a rate of \$70 per hour. With a total staff time of 232 hours, the total cost incurred by Regional Board staff is \$16,240.
10. Upon consideration of the factors listed in Section 13385(e) of the California Water Code, the Regional Board's Executive Officer recommends an administrative civil liability of \$850,000, which includes staff costs of \$16,240. The Regional Board intends that this action resolve the City's liability to the Regional Board for all sanitary sewer overflows from October 1, 1995 through September 30, 1998, with the exception of sanitary sewer overflows on April 28, 1997 and November 5, 1997 (for which the Regional Board has taken separate enforcement action).
11. The penalty of \$850,000 is due and payable on November 30, 1998, subject to the provisions outlined below.
- a) The City may elect to pay up to \$650,000 of the penalty by committing to Supplemental Environmental Projects (SEPs). Should the City propose \$650,000 of SEPs in lieu of cash payment, the remaining \$200,000 of the penalty is due and payable to the State Water Resources Control Board's Cleanup and Abatement Account by November 30, 1998.
- b) In the event that the City elects to conduct SEPs, a proposal for such projects is due to the Regional Board by November 17, 1998. The proposal for SEPs will be subject to public notice and the approval by the Regional Board. Should the Regional Board decide not to approve the City's proposed SEPs, the City shall either:

- i) submit a new proposal for SEPs per direction of the Regional Board, within 30 days of such a decision by the Regional Board; or
    - ii) make a cash payment for the remaining \$650,000 of the penalty, to the State Water Resources Control Board's Cleanup and Abatement Account, within 30 days of such a decision by the Regional Board.
  - c) Should the City fail or elect not to propose supplemental environmental projects, the amount of \$650,000 will be due and payable within 30 days of such a determination by the Regional Board's Executive Officer.
12. This Complaint for Administrative Civil Liability (ACL) does not preclude the Regional Board from taking enforcement action, including the issuance of other ACLs, for sanitary sewer overflows that occur in the future.
13. **WAIVER OF A HEARING:** The City may waive its right to a hearing. Should the City choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver form, a check in the amount of \$200,000 (payable to the State Water Resources Control Board, Cleanup and Abatement Account), and a letter clearly stating the City's commitment to work with the Regional Board on a proposal for SEPs, to the Regional Water Quality Control Board, Los Angeles Region, 101 Centre Plaza Drive, Monterey Park, California, 91754-2154, by November 2, 1998.
14. This Complaint is exempt from the requirements of the California Environmental Quality Act (Public Resources Code Section 21100, et seq.), as an enforcement action pursuant to Title 14, California Code of Regulations, Section 15321.

**IT IS HEREBY ORDERED** that, pursuant to Section 13323 of the California Water Code, the City of Los Angeles shall submit a check for the penalty in the amount of eight hundred fifty thousand dollars (\$850,000) to the Regional Board by November 30, 1998. In lieu of \$650,000 of this penalty, the City has the option to propose SEPs, subject to the conditions above.

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In the event that the City fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of Attorney General for enforcement.

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DENNIS A. DICKERSON  
Executive Officer

Dated: September 30, 1998



**WAIVER OF THE RIGHT TO A HEARING**

By signing below and attaching a check for the amount of administrative civil liability proposed in Complaint No. 98-076, the City of Los Angeles waives its right to a hearing before the Regional Board. The City understands that it is foregoing its right to argue against the allegations made by the Executive Officer in this Complaint, and against imposition of, and the amount of, the civil liability imposed. Furthermore, the City understands that if an Administrative Civil Liability Order is adopted at the Regional Board meeting on November 2, 1998, payment will be due on November 30, 1998.

Signature:\_\_\_\_\_

Name:\_\_\_\_\_

Position:\_\_\_\_\_

City of Los Angeles

Date:\_\_\_\_\_